



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA-2021-0063]

RIN 2126-AC40

### **Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** FMCSA proposes amendments to its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1, 2019, edition of the handbook. Through this document, FMCSA proposes to incorporate by reference the April 1, 2021 edition.

**DATES:** Comments on this document must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2021-0063 using any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/docket/FMCSA-2021-0063/document>. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. José Cestero, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-5541, jose.cestero@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

This notice of proposed rulemaking (NPRM) is organized as follows:

- I. Public Participation and Request for Comments
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- II. Executive Summary
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- J. National Environmental Policy Act of 1969

## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2021-0063), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2021-0063/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

### **Confidential Business Information**

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your

comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### **B. Viewing Comments and Documents**

To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2021-0063/document> and choose the document to review. To view comments, click this NPRM, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

#### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described

in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### **D. Advance Notice of Proposed Rulemaking Not Required**

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

## **II. EXECUTIVE SUMMARY**

This NPRM proposes to update an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2019, edition of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." The CVSA handbook contains inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route controlled quantities of radioactive material. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Compliance Division) at (202) 366-1812. The document may be purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830-6143, [www.cvsa.org](http://www.cvsa.org).

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2021, edition of the handbook. FMCSA did not update § 385.4(b) to incorporate by reference the April 1, 2020, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2019 edition of the handbook, including the updates made in the April 1, 2020, edition of the handbook.

Twenty-one updates distinguish the April 1, 2021, handbook edition from the 2019 edition. The incorporation by reference of the 2021 edition does not impose new regulatory requirements.

### **III. LEGAL BASIS FOR THE RULEMAKING**

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on hazardous materials safety permits. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this document is applicable.

### **IV. BACKGROUND**

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway

route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route controlled quantities of radioactive material shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the United States.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.”

According to 2015-2019 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3.34 million Level I – Level VI inspections were performed annually. Nearly 97 percent of these were Level I,<sup>1</sup> Level II,<sup>2</sup> and Level III<sup>3</sup> inspections. During the same period, an average of 611 Level VI inspections were performed annually, comprising only 0.02 percent of all inspections. On average, OOS violations were cited in only 7.8 Level VI inspections annually (2 percent), whereas on average, OOS violations were cited in 266,025 Level I inspections (25 percent), 275,840 Level II inspections (23 percent), and 61,201 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2021 and 2020 editions of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2021 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

## **V. DISCUSSION OF PROPOSED RULEMAKING**

Section 385.4(b)(1), as amended on February 24, 2020 (85 FR 10307), references the April 1, 2019, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2019, edition date with a reference to the new edition date of April 1, 2021.

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<sup>1</sup> Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

<sup>2</sup> Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

<sup>3</sup> Level III is a driver-only inspection that includes examination of the driver's credentials and documents.



CVSA also published a 2020 edition of the handbook in the period between the February 24, 2020, final rule and the publishing of the 2021 edition. FMCSA did not publish an update to the incorporation by reference in § 385.4(b)(1) with the April 1, 2020, edition of the handbook. This NPRM will therefore discuss the updates included in the 2020 and 2021 editions of the handbook. The changes made based on the 2020 and 2021 editions of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

### ***April 1, 2020, Changes***

Seventeen changes in the 2020 edition of the CVSA handbook distinguish it from the April 1, 2019 edition:

1) The title of Part I, Item 2.a. was amended to clarify that "...vehicles that, regardless of GVWR, do not require a commercial driver's license (CDL) (e.g., exempt farm vehicles or fire apparatuses, etc.)" (2020 CVSA handbook, page 11) are included in this section of the OOSC. Currently, this section applies only to vehicles with a gross vehicle weight rating (GVWR) of 26,000 lbs. or less, not designed to transport 16 or more passengers or placarded loads of hazardous materials. Under the current wording, a driver cannot be placed OOS for not having the proper class of driver's license, for having a suspended/revoked license, or for being unlicensed when operating a vehicle over 26,000 pounds GVWR and exempt from the requirements to have a CDL. However, and because the FMCSRs include a number of regulatory exceptions to the CDL requirements, there are numerous other vehicle types over 26,000 pounds GVWR that may have non-CDL drivers (e.g., covered farm vehicles, intrastate farm vehicles, emergency vehicles, etc.). This clarification will not have any effect on the number of OOS violations cited during Level VI inspections, as all drivers transporting hazardous materials are required to have a CDL.

2) The note in Part I, Item 2.b., and Part I, Item 3.c., was amended to clarify that in Canada, a “valid” Canadian Transportation of Dangerous Goods (TDG) training certificate is required. Canadian TDG training certificates require certain informational items be identified; language was added to the note to clarify that a training certificate is considered invalid and the driver should be placed OOS if it is missing that required information. This update will ensure a uniform approach to Canadian TDG training certificate validity. This clarification is not expected to have any effect on the number of OOS violations cited during Level VI inspections in the U.S.

3) The title of Part I, Item 7., was amended by removing the language “AS IDENTIFIED UNDER SECTION 392.4(a)” because the OOS violations now listed in this section are not all located in § 392.4(a). In addition, CVSA added a new OOS item to address drivers who are recorded in the Drug and Alcohol Clearinghouse as prohibited from performing safety-sensitive functions per § 382.501(a) as a result of failing an alcohol or drug test. FMCSA records indicate that no driver-related OOS violations have been issued as a result of a Level VI inspection in the past 3 years. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

4) Footnote 14 to Part I, Item 9., was amended to remove the reference to automatic on-board recording devices (AOBRDs), and a note was added to Footnotes 11-14 of the same section. The reference to AOBRDs in Footnote 14 was removed because the grandfather clause permitting use of AOBRDs expired on December 16, 2019, and therefore the reference to AOBRDs in Footnote 14 is no longer relevant. Since December 2017, the information in the ‘NOTE’ outlines the policy that CVSA has used for placing drivers out of service for electronic logging device (ELD) violations. Similar information is listed in FMCSA’s Frequently Asked Questions document on ELDs. The CVSA Driver-Traffic Enforcement Committee voted to add this information as a note relative to

Footnotes 11-14. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

5) Part I, Item 10.h., regarding records of duty status (RODS) in Canada was amended to remove the provision for a driver to be placed OOS for a period of 72 hours for not producing a daily log. Recent changes to the Canadian federal hours-of-service (HOS) regulations have eliminated the ability of an officer/inspector to place a driver OOS for 72 hours for not producing a daily log. Under the new regulations, a driver is placed OOS only for the number of hours required to have the driver provide a compliant daily log. This amendment is applicable only to the enforcement of Canadian HOS regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

6) Footnote 2 to Part I, Item 10., regarding RODS in Canada was amended to reduce the time a driver can be behind on his/her daily log and not be declared OOS. Given the recent changes to the Canadian federal HOS regulations as discussed above, and because the 72-hour timeframe to place a driver OOS for no production of a log book was removed, it was deemed appropriate to reduce the time a driver can be behind on his/her log before being placed OOS. The timeframe was reduced from the current day plus the previous day to the current day only. This amendment is applicable only to the enforcement of Canadian HOS regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

7) Part I, Item 11., was amended by (1) replacing the OOSC for Mexico to reflect the requirements in NOM-087-SCT-2-2017, and (2) adding footnotes to that section. NOM-087-SCT-2-2017 are Mexico's CMV regulatory requirements. Mexico recently updated its HOS Official Mexican Standards (Norma Oficial Mexicana) (NOMs), and this update required changes to the OOSC. CVSA worked with Mexico to

make these updates, and Mexico approved the amendments as written for use in Mexico for OOS conditions. This amendment is applicable only to the enforcement of Mexican HOS regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

8) The charts for “Clamp Type Brake Chamber Data” and “Long Stroke Clamp Type Brake Chamber Data” in Part II, Item 1.a., were amended to add a new column listing the SAE J2899 markings found on brake chambers. SAE J2899, “Brake Adjustment Limit for Air Brake Actuators,” was issued in December 2013 and revised in June 2017, and was developed to provide an alternative way of determining the size and allowable stroke of a brake chamber. Manufacturers have the option to cast a marking permanently onto the center section of the brake chamber using the letters “A” through “H.” The markings are easy to see and indicate the rated stroke and pushrod stroke of the chamber without the need to measure the diameter or determine if it is long or short stroke. This marking method reduces the likelihood that an inspector will either (1) pass a vehicle that should be OOS, or (2) place a vehicle OOS that is within acceptable operating conditions. The CVSA Vehicle Committee voted unanimously to add a column in the charts in Part II, Item 1.a. that lists the SAE J2899 markings found on brake chambers. FMCSA records indicate that no violations or OOS violations have been issued regarding brakes being out of adjustment as a result of a Level VI inspection in the past 3 years. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

9) Part II, Item 1., was amended to add a clarification that a parking brake needs to be held by mechanical means. Clarification was necessary regarding whether (1) the mechanical holding of the parking brake should be required, or (2) applying the parking brake with hand pressure and holding it with hand pressure is adequate. Specifically, in

cases where the actuator cannot hold the parking brake in the applied position, it was unclear whether the vehicle should be placed OOS. Following discussion with brake industry experts, the CVSA Vehicle Committee confirmed that Federal Motor Vehicle Safety Standard Nos. 105 and 121 require the parking brake to be held by a mechanical means. FMCSA records indicate that no OOS violations have been issued regarding parking brakes as a result of a Level VI inspection in the past 3 years. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

10) The title of Part II, Item 11.d., was amended to remove sway bars from the OOSC. The CVSA Vehicle Committee determined that sway bars provide comfort, not stability, and that they are not a critical vehicle inspection item. As such, the CVSA Vehicle Committee determined that missing or loose sway bars should not be an OOS condition. This amendment also requires a supporting edit to Note 2 in Part II, Item 11.b., that references the title to Part II, Item 11.d. FMCSA records indicate that no OOS violations have been issued regarding sway bars as a result of a Level VI inspection in the past 3 years. As such, and because the changes eliminate an existing OOS condition, the changes will not affect the number of OOS violations cited during Level VI inspections.

11) Part II, Item 12.a.9., and Part II, Item 12.b.4., were amended to clarify that the OOS condition refers to a wheel end on an axle. In response to questions regarding whether the tire loading restriction in § 393.75(g) of the FMCSRs applies to (1) a wheel end on an axle, or (2) a single tire on an axle, or (3) whether the entire axle must exceed the tire weight rating in order to constitute an OOS condition, the CVSA Vehicle Committee determined that exceeding the tire load limits should apply to the wheel end. The OOS condition applies when the tire or dual set exceeds the applicable load rating on the sidewall of the tire(s), and the language was amended to reflect this condition. FMCSA records indicate that no OOS violations have been issued regarding tire loading

restrictions as a result of a Level VI inspection in the past 3 years. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

12) Part II, Item 16.a., was amended to add new OOS conditions for emergency exits on passenger-carrying vehicles that are marked as such, but that are not necessarily required to be installed by regulation. Language was added to this section to clarify that passenger-carrying vehicles with marked emergency exits that are obstructed should be declared OOS, whether such exits are required to be installed or not. The new criteria were also separated to reference marked required exits, versus other marked exits, and the revised criteria clearly articulate the items/conditions that constitute an OOS condition. As this change applies only to passenger-carrying vehicles, it will not have any effect on the number of OOS violations cited during Level VI inspections, which are applicable to carriers transporting transuranics and highway route controlled quantities of radioactive materials.

13) Part III, Item 3.c., was amended to modify: (1) the title of this section; and (2) the OOS condition to include terminology adopted in Canada's TDG Regulations. While the previous title of this section referred only to "Bulk Package Authorization," Canada's TDG Regulations do not reference bulk packages, but instead reference and define the term "large means of containment." The Canadian Education Quality Assurance Team (EQAT) – Dangerous Goods Working Group requested addition of the Canadian terminology in the OOSC to improve uniform application of the OOS condition. Adding "large means of containment" to the OOSC will make it easier for Canadian inspectors to interpret the criteria. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.

14) Part III, Item 3.d., was amended by adding a note regarding manhole covers. The CVSA Hazardous Materials Committee contacted the Truck Trailer Manufacturers Association to discuss manhole securement with the Tank Engineering Committee. The committee agreed that all fasteners on the dome need to be engaged and hand tightened to be considered closed and secured. Based on this information, the committee voted to add a note to the OOSC to clarify that an OOS condition exists when any manhole cover securement device is missing or unsecured. The change is intended to ensure clarity in the presentation of the OOS condition and is not expected to affect the number of OOS violations cited during Level VI inspections.

15) The title of Part III, Item 6., was amended to include terminology adopted in Canada's TDG Regulations. While the previous title of this section referred only to "Non-Bulk Packaging," Canada's TDG Regulations do not reference non-bulk packaging, but instead reference and define the term "small means of containment." The Canadian EQAT – Dangerous Goods Working Group requested the addition of Canadian terminology in the title to improve uniform application of the OOS condition. Adding "small means of containment" to the OOSC will make it easier for Canadian inspectors to interpret the criteria. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections.

16) Part III, Item 10.a., regarding requirements pertaining to Canada's Emergency Response Assistance Plan (ERAP) was amended to specify that certain ERAP information must be on the shipping document. The Canadian EQAT – Dangerous Goods Working Group indicated that for first responders to activate an ERAP, the ERAP reference number and implementation telephone number must be listed on the shipping document. Currently, the OOSC only allows inspectors to place a shipment OOS if the carrier/consignor does not have an approved ERAP at all. Situations have arisen where

the ERAP reference number/activation telephone number was not listed on the shipping document, and inspectors were not able to place the dangerous goods shipment OOS as intended. This additional language specifies that this information is required. This amendment is applicable only to Canada's ERAP, and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

17) The Level VI Inspection Procedures were amended by adding Step 36, "Proof of Periodic (Annual) Inspection." Currently, there is no language in the Level VI Inspection Procedures addressing the required periodic (annual) inspection. Adding this item will require each unit to have evidence that a periodic inspection was conducted and satisfactorily completed before a CVSA Level VI decal can be applied by the inspector during a point of origin inspection only. As this is not an OOS condition for the Level VI Inspection, this amendment will not have any effect on the number of OOS violations cited during Level VI inspections.

#### ***April 1, 2021, Changes***

Four changes in the 2021 edition of the CVSA handbook distinguish it from the April 1, 2020 edition:

1) Footnotes 5-8 to Part I, Item 9., were amended to remove language that repeats the FMCSRs. The CVSA Driver-Traffic Enforcement Committee determined that there is no reason to repeat information in the OOSC that is contained in §§ 395.1 and 395.3. Quoting the FMCSRs in the footnotes could potentially confuse an inspector as there are other applicable exemptions that are not addressed in the footnotes. The footnotes, 5-8, were removed and reserved because other documents refer to these notes and renumbering them could cause confusion. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect the number of OOS violations cited during Level VI inspections.



Footnote 10 to Part I, Item 9., was amended to clarify that AOBRDs cannot be used in place of a compliant ELD. However, some carriers are exempt from using ELDs and they may still use AOBRDs. Language was added to this footnote to clarify that drivers who are not required to have an ELD that complies with § 395.22(a), but who utilize an electronic device other than those described in the regulations, shall not be declared OOS. The amendment is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections.

2) In Part I, Items 10.h. and 10.i., regarding RODS in Canada, were amended to include terminology based on the pending implementation of the ELD requirement, effective June 12, 2021. A note was also added to Footnotes 1-2 of the same section. The terminology in Canada's regulation will change from "daily log" to "RODS." However, there will be some Provinces/Territories that will continue to use the daily log terminology in their Provincial/Territorial regulations. The Driver-Traffic Enforcement Committee determined that the appropriate action would be to refer to both terms to make the OOSC applicable to all drivers. These amendments are applicable only to Canada's RODS, and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

3) Part I, Item 10., regarding RODS in Canada was amended by adding a footnote 6 to indicate that a driver who is found without an ELD but is still completing another form of a RODS will currently not be placed OOS. This enforcement action is different from that applicable in the U.S., so the note was added for Canadian inspectors to reference, similar to the note for the U.S (Footnote 10, Part I, Item 9. United States). The amendment is applicable only to Canada's RODS, and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

4) Part II, Item 9.b., was amended to clarify that an inoperative center high-mounted stop lamp(s) that is required by regulation is considered a critical vehicle inspection item, but not considered for OOS purposes. The CVSA-critical vehicle inspection item list and the OOSC include “Lighting devices (headlamps, tail lamps, stop lamps, turn signals, and lamps/flags on projecting loads).” In both the United States and Canada, there are regulations requiring some smaller vehicles to be equipped with center high-mounted stop lamp(s) and they must be maintained and operational; however, on larger vehicles, they are optional. Therefore, in those cases where center high-mounted stop lamp(s) are required, the vehicle will still require at least one brake light in addition to the center high-mounted stop lamp(s) to avoid being placed OOS. The amendment is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect the number of OOS violations cited during Level VI inspections.

## **VI. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State, and Provincial motor carrier safety enforcement agencies in the United States, Canada, and Mexico. The OOSC provide uniform enforcement tolerances for inspections conducted in all three countries.

## **VII. SECTION-BY-SECTION ANALYSIS**

***Section 385.4 Matter incorporated by reference***

Section 385.4(b)(1), as amended on February 24, 2020, references the April 1, 2019, edition of the CVSA handbook. This NPRM would replace the reference to the April 1, 2019, edition date with a reference to the new edition date of April 1, 2021.

## **VIII. REGULATORY ANALYSES**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations**

FMCSA has considered the impact of this proposed rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. OIRA determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Accordingly, OMB has not reviewed it under these Orders.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2019, edition to the April 1, 2021, edition of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." FMCSA reviewed its MCMIS data on inspections performed from 2015 to 2019 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule's impact would be de minimis.

### **B. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801, et seq.), the Office of Information and Regulatory Affairs (OIRA) designated this rulemaking as not a “major rule,” as defined by 5 U.S.C. 804(2).<sup>4</sup>

### **C. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2021 edition imposes new requirements or makes substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule would update an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at 49 CFR 385.415(b), and would incorporate by reference the April 1, 2021, edition of

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<sup>4</sup> A “major rule” means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

the CVSA handbook. The changes to the 2021 edition of the CVSA handbook from the 2019 edition are intended to ensure clarity in the presentation of the OOS conditions, and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2021 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections. Accordingly, I certify that, if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA invites comments from anyone who believes there will be a significant impact on small entities from this action.

**D. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rulemaking so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**E. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$170 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2020 levels) or more in any one year. Though this rulemaking would not result in such an expenditure, the Agency does discuss the effects of this rulemaking elsewhere in this preamble.

**F. Paperwork Reduction Act**

This rulemaking contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**G. E.O. 13132 (Federalism)**

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rulemaking would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

**H. Privacy**

The Consolidated Appropriations Act, 2005,<sup>5</sup> requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This rulemaking would not require the collection of personally identifiable information.

**I. E.O. 13175 (Indian Tribal Governments)**

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<sup>5</sup> Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note (Dec. 8, 2004).

This rulemaking does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

**J. National Environmental Policy Act of 1969**

FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE and the rulemaking does not have any effect on the quality of the environment.

**List of Subjects in 49 CFR 385**

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

**PART 385--SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

2. Revise § 385.4(b)(1) to read as follows:

**§ 385.4 Matter incorporated by reference.**

\* \* \* \* \*

(b) \* \* \*

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2021, incorporation by reference approved for § 385.415(b).

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Issued under authority delegated in 49 CFR 1.87 on:

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Meera Joshi,  
Deputy Administrator

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